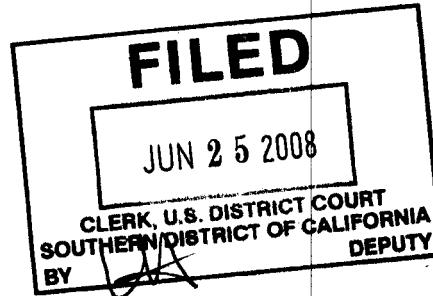


1 Raymond Robinson
 2 4562 Illinois St.
 3 San Diego, CA 92116
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 6 in pro per



7
 8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
 11 RAYMOND ROBINSON,) Case No.: '08 CV 0244 DMS (BLM)
 12 Plaintiff,)
 13 vs.)
 14 DAVID RUBIN and BRIAN CORNELL,)
 15 Defendants.)
 16

17 Notice is hereby given that Raymond Robinson, Plaintiff in the above-named case,
 18 hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order
 19 dismissing the complaint with prejudice as to Defendant Brian Cornell entered in this
 20 action on the Ninth day of June, 2008.

21 Dated: 6-25-08

Ray Robinson

22 Raymond Robinson, Plaintiff in pro per
 23
 24
 25

1 Plaintiff filed the present case against Judge Rubin and Defendant Cornell on February 7, 2008.
2 Defendants each filed motions to dismiss the complaint, which were denied as moot upon the filing
3 of Plaintiff's First Amended Complaint.

4 In the First Amended Complaint, Plaintiff alleges the Defendants conspired to deprive him of
5 his due process rights as protected under and guaranteed by Section 1 of the Fourteenth Amendment.
6 Plaintiff also alleges the Defendants violated California Civil Code sections 1708, 1709, 1710 and
7 California Penal Code sections 182(a)(1) and 182(a)(5).¹ Judge Rubin filed a motion to dismiss the
8 First Amended Complaint on May 21, 2008, and a hearing on the matter is scheduled for July 11,
9 2008.

10 **II.**

11 **DISCUSSION**

12 Defendant Cornell moves to dismiss the First Amended Complaint for two reasons. First, he
13 argues Plaintiff has failed to state a claim upon which relief can be granted. Second, he asserts he is
14 immune from liability.

15 **A. Failure to State a Claim**

16 Dismissal pursuant to Rule 12(b)(6) is proper only where there is no cognizable legal theory
17 or an absence of sufficient facts alleged to support a cognizable legal theory. *Navarro v. Block*, 250
18 F.3d 729, 732 (9th Cir. 2001) (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
19 1988)). In deciding a 12(b)(6) motion, all material factual allegations of the complaint are accepted
20 as true, as well as all reasonable inferences to be drawn from them. *Cahill v. Liberty Mut. Ins. Co.*,
21 80 F.3d 336, 338 (9th Cir. 1996). However, the court need not accept all conclusory allegations as
22 true; rather, it must "examine whether conclusory allegations follow from the description of facts as
23 alleged by the plaintiff." *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted).
24 See also *Benson v. Arizona State Bd. of Dental Examiners*, 673 F.2d 272, 275-76 (9th Cir. 1982) (court
25 need not accept conclusory legal assertions); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977)

26 _____
27 ¹ Because the Court has dismissed all of Plaintiff's federal claims, the Court declines to exercise
28 supplemental jurisdiction under 28 U.S.C. § 1337(c) as to the state law claims under California Civil Code
sections 1708, 1709, 1710. The Court also declines to address Plaintiff's criminal claims because a private
citizen has no authority to initiate a federal criminal prosecution; that power is vested exclusively in the
executive branch. See *United States v. Nixon*, 418 U.S. 683, 693 (1974).

1 ("Conclusory allegations, unsupported by facts, [will be] rejected as insufficient to state a claim under
2 the Civil Rights Act."); *accord Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984) ("All
3 well-pleaded facts, as distinguished from conclusory allegations, must be taken as true."). A claim
4 "should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in
5 support of his claim which would entitle him to relief." *Perfect 10, Inc. v. Visa Intern. Service Ass'n*,
6 494 F.3d 788, 794 (9th Cir. 2007) (quoting *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9th Cir.
7 2002)).

8 To allege a claim of conspiracy under Section 1983, Plaintiff must allege facts with sufficient
9 particularity to show an agreement or a meeting of the minds to violate the Plaintiff's constitutional
10 rights. *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); *Woodrum v. Woodward County*, 866 F.2d
11 1121, 1126 (9th Cir. 1989). "Vague and conclusory allegations of official participation in civil rights
12 violations are not sufficient to withstand a motion to dismiss." *Ivey v. Board of Regents*, 673 F.2d
13 266, 268 (9th Cir. 1982); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (conclusory
14 allegations of conspiracy insufficient to support a claim under Section 1983 or 1985). Here, Plaintiff
15 has failed to allege any facts which show an agreement or meeting of the minds to violate any of
16 Plaintiff's constitutional rights. *See Woodrum*, 866 F.2d at 1126.

17 Even if Plaintiff had alleged facts to support this element of his claim, this Court agrees with
18 Defendant that Plaintiff has no legal basis for a Section 1983 claim. The California Supreme Court
19 has specifically held that a traffic infraction hearing conducted without a prosecutor where a judge
20 calls and questions the officer who issued the citation does not violate due process. *People v.*
21 *Carlucci*, 23 Cal 3d. 249, 256 (1979). When Defendant Cornell testified regarding the circumstances
22 of the citation, he was a witness, not a prosecutor. As a trier of fact, Judge Rubin sought to understand
23 the facts of the incident through the testimony of Plaintiff and Defendant Cornell. Accordingly, the
24 Court grants Defendant Officer Cornell's motion to dismiss Plaintiff's conspiracy claims pursuant to
25 Federal Rule of Civil Procedure 12(b)(6).

26 **B. Immunity**

27 Defendant Cornell is immune from civil liability for his testimony as a witness in the traffic
28 infraction proceedings. Like other witnesses, a police officer who testifies in a criminal proceeding

1 is immune from civil liability, even if he committed perjury. *Briscoe v. LaHue*, 460 U.S. 325, 345
2 (1983). In light of the immunity afforded to Defendant Cornell as a witness, this Court declines to
3 address additional immunities raised by Defendant. Accordingly, this Court grants Defendant's
4 motion to dismiss because Defendant Officer Cornell is absolutely immune from civil liability for his
5 testimony.

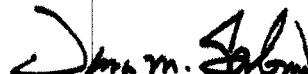
6 **III.**

7 **CONCLUSION AND ORDER**

8 In light of the above, the Court GRANTS Defendant's motion to dismiss Plaintiff's First
9 Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).
10 Plaintiff's First Amended Complaint is hereby dismissed as against Defendant Cornell without leave
11 to amend.

12 **IT IS SO ORDERED.**

13 DATED: June 9, 2008

14 
15 HON. DANA M. SABRAW
16 United States District Judge

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Notice of Appeal Notification Form

To: Clerk, U.S. Court of Appeals
From: U.S. District Court, Southern District of California
Subject: New Appeals Case Information & Docket Fee Notification

Date: 06/26/08

Case Information

Case Title: Raymond Robinson v. David Rubin, et al

U.S.D.C. No.: 08cv244 DMS (BLM) U.S.D.C. Judge: Dana M. Sabraw

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 6/9/2008

Notice of Appeal Filed: 6/25/2008

Court Reporter: n/a

COA Status: Granted in full/part (appeal only) Denied (send clerk's file)

Docket Fee Notification

Docket Fee: Paid Not Paid

USA/GOV'T. APPEAL: Yes No No Fee Required

Date F/P granted (Show Date and Attach Copy of Order): _____

Was F/P Status Revoked? Yes No

Companion Case(s): (Please list consolidated cases, if applicable) _____

Counsel Information

Appellant Counsel:

Raymond Robinson

4562 Illinois Street

(619) 283-3121

Appellee Counsel:

Cheryl Lynn Brierton

Superior Court of CA, County of San Diego

220 West Broadway
San Diego, CA 92101

(619) 450-5356

Counsel Status: Retained

Appointed

Pro Se

Appointed by: _____
(Attach copy of order/minutes)

Defendant Information

Prisoner ID Number: n/a

Bail: _____

Custody: _____

SERVICE LIST

Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:

<input checked="" type="checkbox"/>	Transmittal of U.S.C.A. (Appellant and Appellee)
<input checked="" type="checkbox"/>	Case Information/Docketing Fee Notification Form. (Appellant Only)
<input checked="" type="checkbox"/>	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
<input checked="" type="checkbox"/>	Docket Entries (Appellant and Appellee)
<input checked="" type="checkbox"/>	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
<input checked="" type="checkbox"/>	Other: Order granting motion to dismiss first amended complaint against defendant Cornell entered 6/9/2008

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Lauren Hammer

Deputy's Name

L. Hammer

Deputy's Signature

UNITED STATES DISTRICT COURT
 Southern District Of California
 Office Of The Clerk
 880 Front Street, Room 4290
 San Diego, California 92101-8900
 Phone: (619) 557-5600
 Fax: (619) 702-9900

W. Samuel Hamrick, Jr.
 Clerk of Court

To: Clerk, U.S. Court of Appeals
 P.O. Box 193939
 San Francisco, CA 94119-3939

Re: USCA No:
 USDC No: **08cv244 DMS (BLM)**
Robinson v. Rubin, et al

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

<input checked="" type="checkbox"/>	Copy of the Notice of Appeal	<input checked="" type="checkbox"/>	Docket Entries	
<input checked="" type="checkbox"/>	Case Information/Docket Fee Payment Notification Form			
	Order for Time Schedule (Criminal)			
	Original Clerk's Record in		set(s) of	volume(s).
	Reporter's transcript's transcripts in		set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es)	folders(s)
	Judgement Order			F/P Order
	CJA Form 20			Minute Order
	Certificate of Record			Mandate Return
	Magistrate Judge's Report and Recommendation			
	COA Order			
	Amended docket fee notification form			
	Order Appointing Counsel for Appeal			
<input checked="" type="checkbox"/>	Order granting motion to dismiss amended complaint against dft. Cornell entered 6/9/2008			
<input checked="" type="checkbox"/>	Please acknowledge on the enclosed copy of this transmittal			

Sincerely yours,

W. Samuel Hamrick, Jr.
 Clerk of Court

L. Hammer
 By: _____
 Lauren Hammer, Deputy

6/26/08